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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SHAWN MEEHAN, an individual, JANINE  
HANSEN, and individual LYNN CHAPMAN,  
an individual, MELISSA CLEMENT, an  
individual,

Plaintiff,

vs.

STEPHEN F. SISOLAK, in his official  
capacity as Governor of the state of Nevada,  
AARON DARNELL FORD, in his official  
capacity as the Attorney General of the State  
of Nevada, BRENDA ERDOES in her official  
capacity as Head of the Legislative Counsel  
Bureau, NICOLE CANNIZZARO in her  
official capacity as Chair of the Legislative  
Commission, DOES I through 100,

Defendants.

Case No. 3:21-cv-00100-MMD-WGC

**EXECUTIVE DEFENDANTS’  
OPPOSITION TO PRELIMINARY  
AND PERMANENT INJUNCTION  
AND DECLARATORY RELIEF,  
COUNTERMOTION TO DISMISS,  
AND JOINDER TO THE  
LEGISLATURE’S PENDING  
MOTION**

Defendants Stephen F. Sisolak, in his official capacity as Governor of the State of Nevada; and Aaron D. Ford, in his official capacity as Attorney General of the State of Nevada (collectively the “Executive Defendants”) hereby oppose Plaintiffs’ Motion for Preliminary and Permanent Injunction and move to dismiss Plaintiffs’ Complaint. The Executive Defendants also join the Legislative Defendants’ Motion to Suspend All Briefing and to Stay All Proceedings (ECF No. 13), based on lack of service to the Legislative Defendants and the ongoing Ninth Circuit appeal.

1 Plaintiffs are lobbyists seeking a preliminary injunction to reopen the Legislative  
2 Building during COVID-19. The Legislature is a separate branch of Nevada state  
3 government, empowered by statute to decide whether and to whom to close the Legislative  
4 Building. The Executive Branch, notwithstanding its efforts to address the COVID-19  
5 pandemic, did not close the Legislative Building and does not have the statutory authority  
6 to reopen it. Because the Executive Defendants lack the authority to redress Plaintiffs'  
7 demand to reopen the Legislative Building, Plaintiffs lack standing to bring this motion  
8 and complaint against the Executive Defendants.

9 On this basis, the motion should be denied as to the Executive Defendants and the  
10 Executive Defendants should be dismissed from this case with prejudice. The Executive  
11 Defendants join the Legislative Defendants' motion to suspend briefing and to stay all  
12 proceedings, which will allow the Legislative Defendants to be properly served and to  
13 address the substantive issues of this case on their merits.

14 This Opposition, Countermotion, and Joinder is made and based on the following  
15 Memorandum of Points and Authorities, the papers and pleadings on file herein, and any  
16 argument that this Court should choose to entertain on either motion.

17 DATED this 10th day of March, 2021.

18 AARON D. FORD  
19 Attorney General

20 By: /s/ Craig Newby  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. Introduction and Factual Background**

Plaintiffs are Nevada lobbyists who disagree with the closure of the Legislative Building<sup>1</sup> during the current 81<sup>st</sup> Legislative Session. Compl. at 1-4. The “Emergency” Motion<sup>2</sup> for Preliminary Injunction seeks to end “the arbitrary and dilatory closure of the State Capital,” “allow Plaintiffs and other members of the public [to] petition their State officials in person,” and mandate “that the State Capital be open to the public and Plaintiffs as required in Article 4 Section 15 of the Nevada Constitution.” Mot. at 33:12-19.

This opposition and counter-motion to dismiss centers on the question of who closed the Legislative Building. Nevada state government has three separate branches of government. *See* NEV. CONST., art. 3, sec. 1. By naming the Governor and the Attorney General as parties to this case, Plaintiffs ignore their own briefing as to who closed the Legislative Building and as to who has the authority to reopen it:

The administration of the State Capital building and access thereto is the responsibility of the Legislative Counsel Bureau and/or the Legislative Commission. Access to the State Capital and denial thereof is **wholly the realm** of Legislative Counsel Bureau and/or Legislative Commission, whether it is with or without Emergency Orders and Directives.

Mot. at 14:6-10 (emphasis added).

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<sup>1</sup> Plaintiffs juxtapose the “State Capital” (Carson City) and/or the “State Capital building” (where the Legislature used to meet) with the Legislative Building, which is where the Nevada Legislature currently meets and where Appellants seek to lobby members of the Legislature. The Executive Defendants will refer to the Legislative Building as the correct term for the building Plaintiffs seek to reopen.

<sup>2</sup> Plaintiffs’ emergency motion fails to comply with Local Rule 7-4(a). To undersigned counsel’s knowledge, neither of the Legislative Defendants has been served or notified of the emergency motion by Plaintiffs’ counsel. *See* ECF No. 13. This Court subsequently ordered that the motion be addressed in the ordinary course. *See* ECF No. 8. Rather than address the clear error, Plaintiffs instead chose to appeal the Court’s procedural management of its docket to the Ninth Circuit. *See* ECF No. 11. There, Plaintiffs did provide emergency notice to the Executive Defendants in accordance with Ninth Circuit requirements, but not the Legislative Defendants. *See* Emergency Motion for Injunction Pending Appeal (9th Cir. Mar. 3, 2021). On the basis of this lack of service and notification, the Executive Defendants join the Legislative Defendants’ motion to suspend briefing and for stay, allowing for proper service and the substantive issues of this case to be addressed on the merits by the Legislative Defendants.

1 Nevada Revised Statute 331.135(1)(a) plainly states that “the Legislature reserves  
2 the supervision and control, both during and between legislative sessions, ... of the entire  
3 Legislative Building, including its chambers, offices and other rooms, and its furnishings  
4 and equipment.” Nevada Revised Statute 218F.520(1) states that the “Administrative  
5 Division [of the Legislative Counsel Bureau] shall preserve order and security on the  
6 grounds surrounding the Legislative Building and within the Legislative Building.”

7 Under these circumstances, Plaintiffs are unlikely to succeed on the merits of their  
8 claim against the Executive Defendants, warranting denial of the Emergency Motion as to  
9 the Executive Defendants. Further, Plaintiffs’ complaint should be dismissed with  
10 prejudice against the Executive Defendants for lack of standing.

## 11 **II. Legal Analysis**

### 12 **A. Motion for Preliminary Injunction**

13 A preliminary injunction is “an extraordinary remedy that may only be awarded  
14 upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res.*  
15 *Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A court may grant such relief only upon the moving  
16 party’s showing of (1) likelihood of success on the merits, (2) likelihood of irreparable harm  
17 in the absence of preliminary relief, (3) the balance of equities weighs in petitioner's favor,  
18 and (4) an injunction is in the public interest. *Id.* at 20. Where, as here, the party opposing  
19 injunctive relief is a governmental entity, the balance of equities and public interest factors  
20 merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

21 Here, Plaintiffs cannot establish a likelihood of success against the Executive  
22 Defendants for claims tied to the closure of the Legislative Building, as neither the  
23 Governor nor the Attorney General closed the Legislative Building, and neither has any  
24 constitutional or statutory role regarding such a closure.

### 25 **B. Motion to Dismiss for Lack of Standing**

26 Federal Rule of Civil Procedure 12(b)(1) allows the Executive Defendants to  
27 challenge the lack of subject matter jurisdiction by motion. Article III standing limits this  
28 Court's power to cases and controversies. *See* U.S. CONST., Art. III, § 2. Accordingly, “[t]he

1 party invoking federal jurisdiction, [here Plaintiffs], bears the burden of establishing [the  
2 constitutional minimum of standing].” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112  
3 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

4 As set forth below, because Plaintiffs cannot trace the harm of the Legislative  
5 Building being closed to the Executive Defendants, Plaintiffs lack standing to pursue this  
6 case against the Executive Defendants and this case should be dismissed with prejudice  
7 against them.

### 8 **C. Plaintiffs Lack Standing to Pursue this Case Against the Executive** 9 **Defendants**

10 Under the circumstances of this case, Plaintiffs do not have Article III standing to  
11 pursue these claims against the Executive Defendants. Specifically, “Article III of the  
12 Constitution limits federal-court jurisdiction to ‘Cases’ and ‘Controversies.’” *Massachusetts*  
13 *v. EPA*, 549 U.S. 497, 516, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007). “To satisfy Article  
14 III’s standing requirements, a plaintiff must show (1) it has suffered an ‘injury in fact’ that  
15 is (a) concrete and particularized and (b) actual or imminent, not conjectural or  
16 hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and  
17 (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a  
18 favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S.  
19 167, 180-81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (quoting *Lujan v. Defenders of Wildlife*,  
20 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

21 Here, Plaintiffs lack injury fairly traceable to the Executive Defendants. To survive  
22 a motion to dismiss for lack of Article III standing, “plaintiffs must establish a ‘line of  
23 causation’ between defendants’ action and their alleged harm that is more than  
24 ‘attenuated.’” *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (citing *Allen v.*  
25 *Wright*, 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984), *abrogated on other grounds*  
26 *by Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S.Ct. 1377,  
27 188 L.Ed.2d 392 (2014)). “In cases where a chain of causation ‘involves numerous third  
28 parties’ whose ‘independent decisions’ collectively have a ‘significant effect’ on plaintiffs’

1 injuries, the Supreme Court and [the Ninth Circuit Court of Appeals] have found the causal  
2 chain too weak to support standing at the pleading stage.” *Id.* (citations omitted); *see*  
3 *also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103, 118 S.Ct. 1003, 140 L.Ed.2d  
4 210 (1998) (explaining causation as “a fairly traceable connection between the plaintiff’s  
5 injury and the complained-of-conduct of the defendant”).

6 Here, Plaintiffs’ injury from the closure of the Legislative Building is not “fairly  
7 traceable” to any action of the Executive Defendants. In fact, it is not traceable at all. As  
8 conceded in the Motion and as shown by Nevada statute, neither the Governor nor the  
9 Attorney General closed the Legislative Building. Mot. at 14:6-10. Unlike other cases  
10 brought by Plaintiffs’ counsel, there is no emergency directive issued by the Governor  
11 mandating that the Legislature close (or open) the Legislative Building.<sup>3</sup> The Governor  
12 understands the risks of COVID-19 spread in our community, resulting in difficult  
13 decisions he has had to make. Here however, the difficult decisions for keeping the  
14 Legislative Building open or closed lie with the Legislature, not him.

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25 <sup>3</sup> Plaintiffs’ counsel has filed a minimum of four other cases challenging the  
26 Governor’s actions addressing COVID-19 that have been filed with this Court. *See Orion*  
27 *Star Events et al. v. Sisolak et al.*, Case No. 2:20-cv-00827-APG-NJK (closed Aug. 20, 2020);  
28 *Reno Academy of Combat LLC et al. v. Sisolak et al.*, Case No. 3:20-cv-00305-MMD-WGC  
(closed Sept. 2, 2020); *Hetly et al. v. Sisolak, et al.*, Case No. 2:21-cv-00052-RFB-EJY (closed  
Feb. 24, 2021); *Calvary Chapel Lone Mountain v. Sisolak et al.*, Case No. 2:20-cv-00907-  
RFB-VCF (case ongoing following remand from Ninth Circuit).

1 **III. Conclusion**

2 Accordingly, this Court should deny Plaintiffs' emergency motion for preliminary  
3 injunction as to the Executive Defendants and dismiss the Executive Defendants from this  
4 case for a lack of standing, based on the lack of "fairly traceable" injury.

5 DATED this 10th day of March, 2021.

6 AARON D. FORD  
7 Attorney General

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17 *Attorneys for Executive Defendants*  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 10th day of March, 2021, I electronically filed the foregoing document, **EXECUTIVE DEFENDANTS' OPPOSITION TO PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY RELIEF, COUNTERMOTION TO DISMISS, AND JOINDER TO THE LEGISLATURE'S PENDING MOTION** with the Clerk of the Court by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ R. Carreau  
R. Carreau, an employee of the  
Office of the Nevada Attorney General